

LOS ANGELES POLICE COMMISSION

*REVIEW OF AUDIT DIVISION'S
CATEGORICAL USE OF FORCE
INVESTIGATIONS AUDIT
(Fiscal Year 2005/2006)*



Conducted by

OFFICE OF THE INSPECTOR GENERAL

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**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF AUDIT DIVISION'S
CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT**

PURPOSE

Pursuant to Consent Decree (CD) Paragraph 135, the Office of the Inspector General (OIG) reviewed Audit Division's Categorical Use of Force (CUOF) Investigations Audit (Audit). This Audit was completed in the Fourth Quarter, Fiscal Year 2005/2006, and received by the OIG on July 5, 2006. As required, the OIG assessed the Audit's completeness, findings, and quality.

BACKGROUND ON AUDIT DIVISION'S AUDIT

The Consent Decree defines a CUOF as the use of deadly force (e.g., officer involved shootings (OIS)), upper body control holds, uses of force resulting in hospitalization or death, head strikes with an impact weapon, deaths while the arrestee or detainee is in custodial care of the Los Angeles Police Department (LAPD or Department), and canine bites resulting in hospitalization. At the Department's discretion, other incidents can also be investigated as a CUOF, especially when significant risk-management issues are present. All CUOF incidents are investigated by Force Investigations Division (FID), which was established in August 2004.

According to the Audit, the purpose was to assess the Department's compliance with Consent Decree Paragraphs 57, 80, 82, 128, and 129. The evaluated Consent Decree Paragraphs were categorized into 21 audit objectives. There are approximately 120 CUOF incidents every year. The selected population consisted of 24 CUOF investigations that had been reviewed and approved by the Commanding Officer of FID from November 3, 2005, through February 7, 2006.

The most frequent problem found with the investigations regarded the post-incident review and the adequacy of the investigation. The most common discrepancy noted by Audit Division was the lack of documentation as to the reason a potential witness to the CUOF incident was not interviewed. The Commanding Officer of FID concurred with Audit Division's assessment, and has taken steps to prevent these issues from recurring in the future. The table on the next page summarizes the Audit's overall evaluation of each audit objective along with the associated Consent Decree Paragraph compliance rate.

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AUDIT DIVISION'S EVALUATION OF CONSENT DECREE PARAGRAPHS

Objective No.	CD ¶	Objective Title	Compliance Percentage
1	57	Criminal Investigations of CUOF	100%
2	80a	Recorded Interviews	100%
3	80b	Interview Witnesses at Convenient Sites and Times	100%
4	80c	No Group Interviews	92%
5	80e	Interview On-Scene Supervisors Regarding Their Conduct	92%
6	80f(i)	Collect and Preserve Evidence	100%
7	80f(ii)	Canvass for Witnesses	100%
8	80g	Inconsistencies in Statements Addressed	100%
9	82	Collateral Misconduct Investigations	100%
10	128a	Completeness of the Investigation	96%
11	128b(i)	No Canned Language	100%
12	128b(ii)	No Inconsistent Information	96%
13	128b(iii)	Articulation of the Legal Basis for the CUOF	100%
14	128b(iv)	Lack of Indicia the Information is Not Authentic or Correct	100%
15	128c(i)	Underlying Action was Appropriate and Legal	100%
16	128c(ii)	Underlying Action Conformed with Department Procedure	90%
17	128d(i)	Supervisory Oversight of the Incident	100%
18	128d(ii)	Post-Incident Review	42%¹
19	129b ²	Explanation for Missing Evidence	100%
20	129c ³	Comparison of Investigator Summary with Witness Statements	96%
21	129d⁴	Adequacy of the Investigation	46%

Greater detail of Audit Division's methodology and findings can be found in its Audit Report dated June 26, 2006.

REVIEW METHODOLOGY

The OIG assessed the completeness, findings, and quality of Audit Division's Audit, related audit plan, supporting work papers, and source documents.⁵ The OIG reviewed 13 of FID's completed investigations that were audited by Audit Division, performing the same tests that Audit Division

¹ Audit Division incorrectly calculated the compliance percentage at 38%.

² The Audit incorrectly stated the Consent Decree Paragraph as 129a.

³ The Audit incorrectly stated the Consent Decree Paragraph as 129b.

⁴ The Audit incorrectly stated the Consent Decree Paragraph as 129c.

⁵ The OIG selected its sample size of 13 CUOF investigations utilizing a one-tail test, 95% confidence level, expected error rate of 6%, and plus precision of 7%. The OIG excluded the three Non-Categorical Use of Force (NCUOF) investigations from its sample to focus on higher-risk CUOF investigations.

performed for four investigations, and the OIG conducted limited testing for the remaining nine investigations.⁶ Audit Division indicated disagreement with some of the findings in this report.

REVIEW RESULTS

COMPLETENESS

To assess the completeness of the CUOF Investigations Audit, the OIG reviewed the Audit Report and supporting work papers to ensure that Consent Decree mandates were addressed and that all of the investigations fitting Audit Division's criteria were included in the Audit.

Based on the Department's Annual Audit Plan, the Audit evaluated all required Consent Decree mandates. Regarding the audit population, Audit Division identified a complete population, but inadvertently excluded one investigation (F005-05).⁷ Also, as noted in Audit Division's Audit Report, three of the CUOF investigations (F018-05, F024-05, and F132-04) were reclassified from CUOF to Non-Categorical Use of Force (NCUOF). The OIG would have preferred that these three reclassified cases had been excluded from their compliance percentages due to lower risk-management concerns, to ensure the Audit reported on higher risk CUOF investigations.

FINDINGS

The OIG independently performed the same audit tests performed by Audit Division for our judgmental sample of four investigations, and a limited review of the remaining nine investigations. The OIG compared its findings to those reported by Audit Division. As a result of this review, the OIG identified additional concerns that were not noted in Audit Division's Audit Report, as follows:

- Regarding Consent Decree Paragraph 128b(ii) (Inconsistent Information), the OIG noted the following concerns in two investigations:
 1. For one investigation (F021-05), an OIS, in the FID Report, it stated that the suspect ran past the involved officer armed with a knife; however, the investigation revealed that in fact it was a "stick-like" object carried by the suspect. The involved officer indicated that he believed the suspect was armed with a knife. It appears that the FID report needed to clarify that there was only a perception of a knife. Additionally, the FID Report inadvertently indicated that a knife and sheath were booked; however, it was actually a harmonica in a sheath.

⁶ Since the OIG UOF Section had previously reviewed all CUOF investigations in great detail, the OIG Audit Section focused its detailed testing on CUOF investigations that contained higher risk-management concerns, based on the totality of circumstances.

⁷ The FID indicated that F050-05 (transposition of F005-05) was being handled by a Criminal Investigation Section of Internal Affairs Group, but Audit Division erroneously attributed this information as being the status for F005-05 and excluded the investigation from its sample.

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2. For another investigation (F004-05), an OIS, there was an inconsistency on the number of cartridges in the magazines of two officers in the FID report, resulting in a reported inaccuracy in the number of rounds fired by both officers.
- Regarding Consent Decree Paragraph 129d (Adequacy of the Investigation), the OIG noted that in an OIS investigation (F127-04), the OIG identified three concerns regarding the investigation's quality, as follows:⁸
 1. The investigation did not adequately attempt to reconcile how a suspect managed to shoot himself in the temple with a contact gunshot wound and also point his weapon toward the officer (either before or after the suspect shot himself). The officer indicated that he shot the suspect three times (in the torso) because the suspect, after pointing his firearm to his own temple, lowered his firearm and pointed it toward the officer. However, the involved officer, the only one to have a visual of the suspect, did not observe or hear the suspect shoot himself in the temple. Although there is no dispute that the suspect shot himself in the head, and since the involved officer and all but one of the "heard only" witnesses heard only three shots (one "heard only" witness indicated he heard three or four shots), it is likely that the officer shot one of the three rounds while the suspect simultaneously shot himself in the head (the officer had a 9mm firearm and the suspect had a 22 caliber firearm). As such, the OIG believes that additional analysis was warranted to evaluate the feasibility of the suspect shooting himself and also (either before or after) pointing his weapon toward the officer.
 2. A witness officer, who has limited Spanish fluency, indicated that the suspect made a statement to the effect of, *"If you're going to take me, I'm going to kill you."* The involved officer, a fluent Spanish speaker, stated in his interview that the suspect told him in Spanish, *"If you want me, you're going to have to come get me."* Since these statements were inconsistent and as they assist in understanding the frame of mind of the suspect, the OIG believes the officers should have been asked to further clarify the overheard statement in Spanish.
 3. The compelled statement of the involved officer indicated that the investigating officer used a few inappropriate leading questions when asking the officer about his tactical approach to the scene of the incident.⁹

For two investigations (F021-05 and F026-05), Audit Division already determined that the investigations contained issues related to the Adequacy of Investigation and held them out of

⁸ The OIG also noted that for another investigation (F004-05) the file did not contain any ballistic analysis of the projectiles extracted from the suspect's vehicle, which would have been helpful in determining the officer that fired each projectile. However, in totality, the OIG does not believe this concern significantly impacted the overall adequacy of this investigation.

⁹ For example, the investigator asked: "As you ascended those stairs, was your weapon at a low-ready position?" "And as you ascended those stairs, your weapon maintained at the low ready other than when you were going up maybe a high ready?" "And as you approached the threshold of the door, the two other – the two primary officers were on – would that be on the west side of the door?" Did they give you kind of a - - a briefing as to what they had?"

compliance. However, the OIG also identified a few inappropriate leading questions during the interviews of an officer in these investigations.^{10 11}

QUALITY

The OIG evaluated both the Audit and Audit Report for quality. Based on the OIG's review, the Audit was properly planned, supervised, and executed, in that the Audit's methodology allowed for proper and complete assessment of the audit objectives pursuant to Consent Decree mandates. Additionally, the Audit Report delineated the Audit's purpose, population, time period, findings, and the status of prior audit recommendations. The Audit Report used a fair and unbiased tone, and was found to be concise.

However, the OIG noted that one investigation (F026-05) Audit Division did not have a supplemental investigation that provided additional analysis of the physical evidence (including the dimensions of the suspect's vehicle, relevant distances of the collision site, and collision damage to the involved vehicles).¹² The OIG and FID identified that the original investigation required additional investigative steps and Specialized Collision Investigation Detail performed the supplemental analysis. This analysis was important to demonstrate that the direction of the suspect's vehicle during the incident was consistent with the officers' statements that the suspect drove his vehicle in reverse in the path of an officer. Audit Division did not obtain this supplemental investigation when evaluating this case and did not report a concern with the insufficient analysis of the original investigation. Since the analysis was performed prior to being reviewed by the Police Commission, this concern should not impact Audit Division's reported Consent Decree compliance percentages; nonetheless, in its evaluation, the OIG believes that Audit Division should have identified the deficiency with the original investigation.

Additionally, regarding the Audit's assessment of Consent Decree Paragraph 129d (Adequacy of the Investigation), the OIG believes that Audit Division should consider using a more global perspective while evaluating the overall adequacy of the investigation.¹³

¹⁰ For example, in F021-05, the investigator asked: "In other words, does everybody agree that they're seeing the suspect walking towards you?" "So the only time that you saw the deputy was after the incident when you discovered he was injured?" "...and then he directed his attention towards you; is that correct?" "And he started advancing towards you?" "And when you fired your shot, could you see the effect of your round on the suspect?" "And do you believe that you hit him?"

¹¹ For example, in F026-05, the investigator asked: "Okay. And when the car went backwards – I take it, it was your impression since you mentioned specifically the passenger, that the car either reoriented itself or jinked (sic) or did something to indicate it was going towards the passenger's side of the primary vehicle?"

¹² Unbeknownst to Audit Division, after obtaining the completed CUOF investigation from FID, a supplemental investigation was performed as additional analysis was needed.

¹³ For Consent Decree Paragraph 129d, Audit Division determined 13 of the 24 CUOF investigations did not meet the standards of the objective. Five of the 24 investigations had more than one finding. The remaining eight accounted for one finding each. All 13 were held out of compliance for Adequacy of the Investigation regardless of the overall significance of the finding.

OTHER RELATED MATTERS

DIAGRAMS USED IN INTERVIEWS

In reviewing three cases (F013-05, F021-05, and F026-05), the OIG noted that some of the transcribed statements made reference to diagrams being used during involved officer and witness oral interviews to assist them in recalling and discussing the incidents. However, there were no diagrams included in the FID Report that would enable reviewers to better understand the oral interviews and transcribed statements. The OIG was informed that FID would include the diagrams in the future.

LEADING QUESTIONS TO OFFICERS

During the review, the OIG noted there were certain interviews that contained leading questions to officers. Most of the leading questions did not appear to be inappropriate, as they were simply summarization questions based on earlier statements by the interviewees. However, as this area can be ambiguous for investigators, the Department is working on providing additional guidance on what constitutes inappropriate leading questions.

CONCLUSION

Overall, the OIG found the Audit to be complete and it appears that Audit Division conducted a thorough analysis of the CUOF investigations it audited and their findings were supported. This is a very difficult and voluminous audit to perform. Although the OIG identified a few additional concerns, the OIG does not believe that the overall reported compliance percentages would have been significantly impacted, with the exception of the reported compliance percentage for Consent Decree Paragraph 128b(ii) (Inconsistent Information).